

JUN 6 1979

MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1978

NO.

78-1823

TEAMSTERS LOCAL UNION NO. 30, and
TOM SEVER and all others similarly situated,
Petitioners,

v.

HELMS EXPRESS, INC., a division of Ryder Truck Lines,
and the EASTERN CONFERENCE OF TEAMSTERS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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Petitioners herein pray that a Writ of Certiorari be granted by this Court to review a determination of the United States Court of Appeals for the Third Circuit, made January 5, 1979, which affirmed a determination of the United States District Court for the Western District of Pennsylvania, made February 2, 1978 which granted the Defendants' Motions to Dismiss on the ground that the decision of the Teamster Grievance Committee in a grievance filed by Petitioners is final and would not be reviewed by the Court. The Petitioners contend that the determination of the Court is not well taken and should be reversed. Petitioners filed a timely petition for rehearing *en banc* with the United States Court of Appeals for the Third Circuit which was denied on March 8, 1979.

JURISDICTION

Jurisdiction of this Court to review the determination of the United States Court of Appeals for the Third Circuit is given by 28 U.S.C. 1254(1). This petition is being made by the plaintiffs in the cause below, parties to said action.

TIME

The determination of the United States Court of Appeals for the Third Circuit denying Petitioners' timely petition for rehearing was made on March 8, 1979. This petition is being filed within ninety (90) days from the date of said determination.

REASONS WHY THIS PETITION SHOULD BE GRANTED

This case involves several of the Rules of this Court warranting the grant of a Petition for a Writ of Certiorari. This case is:

1. Of great public importance;
2. There is a conflict between the Circuits in the Application of the legal principles involved;
3. There is a conflict between the determination of the Court of Appeals for the Third Circuit and prior determinations of this Court, including *United Steel Workers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593;
4. The determination has so far departed from the accepted and usual course of judicial proceedings in that both the District Court and the Court of Appeals, in granting Respondents' motions to dismiss, did not accept as admitted Petitioners' well pleaded allegations found in its complaint.

FACTS

This case involves the question of whether finality should be given to an award of the Eastern Conference Joint Area Committee (hereinafter ECJAC). This Committee is a body created by the National Master Freight Agreement for the purpose of hearing and deciding grievances between members of local Teamster Unions and the companies by whom they are employed.

The National Master Freight Agreement (hereinafter NMFA) is a collective bargaining agreement between a multi-employer bargaining group of hundreds of trucking companies and the International Brotherhood of Teamsters. Petitioner Teamster Local 30 is a party to the NMFA as is Respondent Helms Express. The NMFA, in Article 20 contains the following language:

The Union and the Employer recognize the principle of a fair day's work for a fair day's pay; that jobs and job security of employees working under this Agreement are best protected through efficient and productive operations of the Employer and the trucking industry. The Employer may establish *reasonable work standards* which shall take into account all factors relating to the work assignment, run terminal and territorial operational conditions, *subject to agreement and approval with the Local Union*, and to be filed for approval with the Conference Joint Area Committee. (Emphasis added.)

On October 22, 1976, Petitioner Sever, a dockman, and ten other employees of Respondent Helms received letters from Helms informing them that they were being suspended from work without pay for violating a "productivity measurement program" instituted by the Company. From that date on the Company continued to suspend employees for allegedly violating these so-called productivity or work

standards. Well over one half of the dockmen employed by Helms at its Irwin, Pennsylvania terminal have been warned or suspended for allegedly violating the "productivity measurement program." The suspensions in question last for up to 30 days.

The work or productivity standards referred to in the suspension letters were put into effect and suspensions made pursuant thereto without any sort of agreement or approval by the local union whatsoever, despite the clear and unambiguous language in the contract requiring "agreement and approval" by the local union before work standards may be established.

In addition, the alleged work standards were unreasonable which also violates Article 20, and were put into effect without negotiations of any kind between the company and the local union. Further, the standards were implemented in bad faith by the company.

Grievances were filed by Petitioner Local 30 on behalf of Petitioner Sever and the other employees suspended on October 22, 1976, with Petitioner Sever's grievance serving as the "pilot" grievance for all of the others. The grievance made its way to the ECJAC, which is comprised of an equal number of management and union representatives. On April 27, 1977, following a hearing before the ECJAC to determine the propriety of the suspensions, the ECJAC made the following decision:

The panel in executive session, motion made, seconded and carried that, due to the company's failure to obtain agreement with the local union or approval of this committee prior to putting into effect the productivity measurement program, the specific claims listed in this case are upheld on the basis of 8-hours' pay for each day of suspension. The committee further ruled that the pro-

ductivity measurement program, as presented, is not in violation of the contract and may be implemented beginning on May 1, 1977. (6 App.)

No opinion or explanation other than the above was made by the ECJAC. Petitioner Local 30 sought additional internal review of the decision of the ECJAC, but ultimately, Petitioners were informed that the decision of the ECJAC was final.

The ECJAC, while recognizing in its decision that there had been no agreement or approval by the local union of the work or productivity standards as Article 20 requires and consequently awarding Sever and 10 others back pay for the period of their suspensions, nevertheless allowed the work standards to be put in effect as of May 1, 1977.

Thus the ECJAC implemented or approved these unreasonable productivity standards which the local union never had the opportunity to negotiate or discuss, without the approval and agreement of Petitioner Local 30, in violation of the clear language of Article 20 of the NMFA.

Petitioners then sued Helms Express and the Eastern Conference of Teamsters in an effort to obtain review of and ultimately set aside and vacate the decision of ECJAC which illegally allowed the work standards at Helms to be implemented. In their complaint, Petitioners alleged facts as set forth above. The Respondents filed motions to dismiss which were granted by the District Court and affirmed by the United States Court of Appeals for the Third Circuit. (See App. A and App. B attached hereto.)

In essence, the opinions of both the district and appeals courts held that Article 20, despite its language to the contrary, does not require agreement and approval of the local union before the work standards could be implemented if

the local unreasonably withholds its approval and agreement from a "reasonable productivity standard." (App. B at 9)

And while the lower courts never found that the local union did unreasonably withhold its approval from reasonable productivity standards, it held that this was a rational way in which the award could be derived from the agreement, and as such, it would not be disturbed.

POINT ONE

THE CONTINUING VITALITY OF THE FEDERAL LABOR POLICY FAVORING PRIVATE SETTLEMENT OF INDUSTRIAL DISPUTES, WHILE ASSUMING THAT THE PRIVATE GRIEVANCE PROCEDURE INSURES A FUNDAMENTALLY FAIR RESULT IS AT STAKE IN THIS CASE AND AS SUCH A QUESTION OF GREAT PUBLIC IMPORTANCE IS INVOLVED WHICH SHOULD BE REVIEWED BY THIS COURT.

The Federal Labor Policy which favors private settlement of labor disputes through the process of arbitration theoretically protects the working person by providing a quick, inexpensive and knowledgeable forum to resolve his problems. He need not spend the money of hiring a lawyer to file suit for him nor wait the long period of time the court litigation inevitably takes, and he can feel secure knowing that a person or committee familiar with his industry will hear the dispute. Finally, he knows that whatever the result, it will be final.

But the underpinnings of this policy require that he receive at least a relatively fair decision based upon the contract that the parties agreed to. If these awards are without question attributed finality no matter how far from the clear language of the contract they stray, then the theoretically sound federal labor policy is undermined.

The present action is such a situation and thus becomes a matter of great public importance. When matters of such importance are presented this Court will, in general, grant certiorari to consider the question. *International Brotherhood of Teamsters v. Vogt*, 354 U.S. 284 (power of a state to enjoin picketing).

POINT TWO

CERTIORARI SHOULD BE GRANTED IN THIS CASE TO DETERMINE THE CONFLICT BETWEEN THE CIRCUITS OF THE PRESENT CASE AND *DETROIT COIL CO. v. MACHINISTS, LODGE 82*, ___ F.2d ___ (6th Cir. Mar. 21, 1979), 100 LRRM 3138, WITH RESPECT TO ABILITY OF THE ARBITRATOR OR GRIEVANCE COMMITTEE TO AMEND THE CONTRACT OR SUBSTITUTE HIS OWN DISCRETION INSTEAD OF THE CONTRACT, IN REACHING A DECISION.

In the present action, the Third Circuit held that, despite clear and unambiguous language in Article 20 of the contract that the local union must approve and agree to productivity standards before the company can put them into effect, agreement by the local union isn't always necessary. Even though the decision of the ECJAC is silent as to how the ECJAC came to that conclusion, the Third Circuit reasoned that approval by the local isn't required if the local unreasonably withholds its approval from "reasonable productivity standards." And the circuit so held despite anything in the record to substantiate the possibility that the proffered hypothetical in fact had occurred. In fact, the allegations of the complaint totally negate the possibility by alleging that the standards were not reasonable and that the local never had the opportunity to negotiate. (See *infra*, Point 4)

In the Sixth Circuit case of *Detroit Coil Co. v. Machinists, Lodge 82*, *supra*, the court there held that the arbitrator

exceeded his authority by allowing a matter to be arbitrated even though the contract provided that the company must be *notified* by the union of its desire to arbitrate within a certain time period which the union failed to do. The arbitrator, in so ruling, held that a rational interpretation of the notification clause of the contract, consistent with past practice, permits the matter to be arbitrated.

The Sixth Circuit, relying on language from the Steelworkers Trilogy* in vacating the award, states as follows:

In view of the clear and unambiguous language of Article V of the collective bargaining agreement, and since the record contains no evidence indicating a departure by the parties from the clear intendment of that language, we conclude that the arbitrator's award cannot be deduced rationally from the agreement, nor does it draw its essence from the agreement.

The judgment of the district court is reversed. The case is remanded with directions to set aside the award of the arbitrator. . . . (100 LRRM at 3141-3142)

In the present action, like *Detroit Coil*, *supra*, the record contains no evidence indicating a departure by the parties from the clear intendment of the language of Article 20 which requires agreement by the local before the productivity standards can be implemented. In fact, Article 12 of the NMFA, made part of the record, in discussing grooming and clothing, states that "the Employer has the right to establish and maintain reasonable standards for wearing apparel and personal grooming." There is nothing in Article 12, however, about the local approving the grooming standards before they are implemented. It is clear that for a matter as important as work or productivity standards, the inclusion by the

*Two of the Trilogy cases are cited by the *Detroit Coil* Court: *U.S.W.A. v. Enterprise Wheel*, 363 U.S. 593 and *U.S.W.A. v. Warrior and Gulf Navigation*, 363 U.S. 574.

parties of language requiring agreement by the local before they were put into effect, was meant to mean what it says, and nothing less.

Where an important question has been differently decided by two different circuits, this Court will, in general, grant certiorari to resolve the conflict. See, for example, *FTC v. Flotill Products, Inc.*, 389 U.S. 179, *Willingham v. Morgan*, 389 U.S. 179.

POINT THREE

THE DETERMINATION OF THE COURT OF APPEALS IS IN CONFLICT WITH THE DECISIONS IN *UNITED STEEL WORKERS OF AMERICA V. ENTERPRISE WHEEL*, 363 U.S. 593 AND *UNITED STEEL WORKERS OF AMERICA V. WARRIOR AND GULF NAVIGATION*, 363 U.S. 574 DECIDED BY THIS COURT.

This Court, in a series of cases known as the *Steelworkers Trilogy*, made it clear that arbitration is favored as a method of resolving labor disputes and that courts will generally refrain from reviewing the merits of an arbitration award. *USWA v. Enterprise Wheel*, *supra*, at 596. However, a corollary principle having equal weight on labor arbitration was also articulated by the Supreme Court in *Enterprise Wheel*, at 597:

[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

In the present case, the ECJAC award, by its own language, recognizes that there must be agreement and approval by the local before the work standards can be put into effect. It awards the suspended men their back pay, but then mysteriously allows the unreasonable and still unapproved and non-agreed to standards to nevertheless go into effect. This is a perfect example of a grievance committee "dispens[ing] its own brand of industrial justice" by making an award which "fails to draw its essence from the collective bargaining agreement. *Enterprise Wheel, supra*. See also Point Two, *infra*. As such the decision of the Court of Appeals conflicts with the decisions of this Court set forth above.

POINT FOUR

CERTIORARI SHOULD BE GRANTED IN THIS CASE IN THAT THE APPEALS COURT DECISION, BY NOT ACCEPTING AS TRUE THE WELL PLEADED ALLEGATIONS IN PETITIONER'S COMPLAINT, HAS DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS.

In the present action, both the district court and the court of appeals read into the clear and unambiguous language of Article 20 of the NMFA some additional language: that work standards can be implemented without the local's approval if the local unreasonably withholds its approval of a reasonable productivity standard. However, Petitioners alleged in the complaint that the standards were unreasonable and that the local union never even had the opportunity to discuss or negotiate these standards, much less unreasonably withhold its approval.

This Court has held that in considering a motion to dismiss, "the allegations of the complaint are taken as admitted and the Complaint is liberally construed in favor of the plaintiff." *Jenkins v. McKeithen*, 395 U.S. 411 at 421 (1969). This

principle of law is axiomatic. If the court of appeals had accepted Petitioners' allegations as true, the hypothetical which the appeals court proposed to justify the award of the ECJAC, could not possibly have existed in fact.

CONCLUSION

This Court should grant certiorari to review the questions presented in this Petition.

Respectfully submitted,

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APPENDIX A

IN THE

United States District Court

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TEAMSTERS LOCAL UNION NO. 30
and TOM SEVER and all others
similarly situated,

Plaintiffs

vs.

HELMS EXPRESS, INC., a division
of RYDER TRUCK LINES, and the
EASTERN CONFERENCE OF
TEAMSTERS,

Defendants

**Civil Action
No. 77-1177**

OPINION

BARRON P. McCUNE, *District Judge*
February 2, 1978.

This action is brought pursuant to §301 of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a), by employees of Helms Express, Inc. and by their local union, Teamsters Local No. 30, against Helms and the Eastern Conference of Teamsters (ECT), a subordinate body of the international union. Labor relations between the Teamsters Local Union No. 30 and Helms Express are governed by the National Master Freight Agreement (NMFA) and the Local Cartage Supplemental Agreement (Supplement). The plaintiffs contend that Helms breached the provisions of the NMFA by instituting and enforcing productivity standards at its Irwin, Pennsylvania operation. They further contend that the Eastern Conference Joint Area Committee (ECJAC), the body set up to settle disputes under the con-

tract, ignored provisions of the contract and exceeded its authority in rendering a decision which approved the implementation of the productivity standards. Additionally, plaintiffs claim that the ECT breached an alleged duty of fair representation in that delegates of the ECT disregarded contract provisions and engaged in collusion with employer representatives on the ECJAC to illegally enact these standards.

Defendants have filed motions to dismiss the Complaint on the following grounds: (1) that the claim against Helms is based upon a grievance which was considered in the ECJAC decision not subject to review on the merits by this court under the facts alleged, and (2) that the Complaint fails to allege facts sufficient to establish a breach of duty of fair representation by the ECT.

The dispute in this case involves the interpretation of Article 20 of the NMFA which reads, in pertinent part, as follows:

"The Union and the Employer recognize the principle of a fair day's work for a fair day's pay; that jobs and job security of employees working under this Agreement are best protected through efficient and productive operations of the Employer and the trucking industry. The Employer may establish reasonable work standards which shall take into account all factors relating to the work assignment, run, terminal and territorial operational conditions, subject to agreement and approval with the Local Union, and to be filed for approval with the Conference Joint Area Committee."

The Complaint alleges that Helms unilaterally enacted productivity standards without agreement or approval of any kind by the local union, and that all the factors referred to in Article 20 were not taken into consideration. The Complaint further alleges that on or about October 22, 1976,

plaintiff Sever was notified by Helms that his productivity measurement fell below a certain standard, as a result of which he was suspended without pay for one day. Several other employees received similar suspension for alleged poor performance. Local No. 30 filed grievances on behalf of the suspended employees, the parties agreeing that the grievance of plaintiff Sever would serve as the "pilot" grievance with its result to be controlling upon the others. (Complaint ¶¶18, 19; Exhibit B).

The procedures governing this type of grievance are set forth in Articles 45 and 46 of the Supplement. Pursuant to Article 45, the employers and unions have created the Western Pennsylvania Joint Area Grievance Committee and the ECJAC. Each Committee is made up of an equal number of union and employer representatives. These two Committees are given the power "to settle disputes which cannot be settled between the Employer and the Local Union" in the preliminary stages of the grievance procedure. (Supplement, Article 45, §3.)

In the event the dispute cannot be settled in the earlier stages, Article 46 provides for a hearing before the Western Pennsylvania Joint Area Committee. When this Committee, by a majority vote, settles a dispute, no appeal may be taken, and the decision is final and binding on both parties. If there is a dead-lock at this stage, the matter is submitted for decision to the ECJAC, which also attempts to settle the dispute by a majority vote. Again, a majority decision by the ECJAC is final and binding on the parties, with no further appeal.

In this case, the matter proceeded to the ECJAC. On April 27, 1977, following a hearing, the Committee rendered the following decision (Complaint, Exhibit D):

"The panel in executive session, motion made, seconded and carried that, due to the company's failure

to obtain agreement with the local union or approval of this committee prior to putting into effect the productivity measurement program, the specific claims listed in this case are upheld on the basis of 8-hours' pay for each day of suspension. The Committee further ruled that the productivity measurement program, as presented, is not in violation of the contract and may be implemented beginning May 1, 1977. Cost split."

At the urging of the local union, the matter was reconsidered by the ECJAC at its July, 1977 meeting. It was held that the original decision was final and binding.

The gravamen of plaintiff's claim consists of two separate but related arguments. They contend that the ECJAC had no authority to approve the productivity standards (1) because Article 20 of the NMFA clearly requires the agreement of the local union before such standards may be implemented, and (2) because the sole issue before the ECJAC was the propriety of the individual employees' suspensions, not the propriety of the productivity standards.

The threshold question presented by the defendants' motions is the proper role of this court in reviewing the merits of the ECJAC decision.¹ In *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358, 4 L.Ed. 2d (1960), the Supreme Court prescribed that role as follows:

"The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements." 363 U.S. at 596.

¹The decision of the ECJAC, the parties chosen instrument for the settlement of grievances under their contract, is subject to the same standard of judicial review as the decision of an independent arbitrator. *General Drivers, Warehousemen & Helpers, Local Union No. 89 v. Riss & Co.*, 372 U.S. 517, 83 S. Ct. 789, 9 L.Ed. 2d 918 (1963).

"Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; . . . He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." 363 U.S. at 597.

In *Ludwig Honold Mfg. Co. v. Fletcher*, 405 F.2d 1123 (1969), the Third Circuit further defined the language employed by the Supreme Court, stating that:

"... a labor arbitrator's award does 'draw its essence from the collective bargaining agreement' if the interpretation can in any rational way be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties intention; only where there is a manifest disregard of the agreement totally unsupported by principles of contract construction and the law of the shop, may a reviewing court disturb the award." 405 F.2d at 1128.

Applying this standard to the facts before us, we have concluded that the ECJAC decision was rationally derived from the contract, and thus may not be disturbed by this court. The decision was brief and offered little explanation other than the statement that Helms' standards were "not in violation of the contract". However, the failure to articulate reasons is not fatal to an arbitrator's decision. *Enterprise Wheel, supra*, at 598; *N. F. & M. Corp. v. United Steelworkers of America*, 524 F.2d 756 (3d Cir. 1975). It is sufficient that we find support for the ECJAC decision in the language of the NMFA and the Supplement.

It is obvious that the ECJAC interpreted the collective bargaining agreement as follows: the parties intended that the ECJAC have the power to approve reasonable produc-

tivity standards for prospective application, even though there had been no agreement between the employer and the local union. This interpretation could have been rationally derived from the language of the contract.

Article 20 of the Supplement makes no provision for the resolution of a dispute over productivity standards. It states that reasonable standards may be established "subject to agreement and approval of the local union, and to be filed for approval with the Conference Joint Area Committee". Plaintiffs argue that there is only one possible construction of this clause: productivity standards may never be implemented without local union approval. However, Article 20 contains other language which renders an alternative interpretation possible. "The Union and the employer recognize the principle of a fair day's work for a fair day's pay." The parties also recognize the interrelationship between an efficient and productive trucking industry and job security. Viewing Article 20 as a whole, the ECJAC could have construed the language to imply an agreement between the parties to the following effect:

(1) that when reasonable productivity standards are enacted by the employer, the union's approval will not be unreasonably withheld, (2) that in a case where the union and employer cannot agree on productivity standards, the matter will be resolved through the contract grievance machinery, and (3) that, in such a case, the ECJAC has the power to approve or disapprove, i.e., to determine whether the standards are reasonable in light of the factors set forth in Article 20.

Assuming that the ECJAC has the power under the contract to approve productivity standards for prospective application, plaintiffs then argue that the use of the power was not appropriate here, because the only issue before the Committee was the propriety of the individual suspensions.

However, the contract is certainly capable of an interpretation which gives the Committee the authority to resolve "disputes" over productivity standards within the operation of the individual grievance machinery. Article 45, §3 and Article 46, §1(e) authorize the Committee to "settle disputes". Clearly, the suspensions created a "dispute" which the parties agreed to submit to the grievance procedure. The "dispute" involved the unilateral enactment of standards by Helms, an issue which the Committee resolved in favor of the individuals suspended, and the reasonableness of the standards themselves, an issue which was resolved in Helms' favor. In settling this dispute, the Committee "construed the agreement as a whole, . . . [and] . . . gave it a construction rendering performance of the contract possible rather than one which rendered its performance impossible or meaningless". *Ludwig, supra*, at 1132.

Ultimately, of course, plaintiffs oppose establishment of the standards on the grounds that "factors relating to work assignment, run, terminal and territorial operational conditions" were not taken into account as Article 20 mandates. This court, however, has no reason to believe that the ECJAC disregarded these factors in determining that the standards were "not in violation of the contract". We will not disturb the Committee's decision, the parties having agreed to be bound by it.

Plaintiffs have also alleged a breach of the duty of fair representation by the ECT, claiming that ECT representatives engaged in "conscious collusion" with employer representatives on the ECJAC to ignore the provisions of Article 20. These allegations are insufficient for two reasons. First, plaintiffs have done no more than allege that the union delegates to the ECJAC have complied with their duties under the grievance procedure established in the collective bargaining agreement, wherein cooperation between union and

management is required in order to "settle disputes" by a majority vote. This procedure for settling grievances has been approved in *Price v. International Brotherhood of Teamsters, Ect.*, 457 F.2d 605 (3d Cir. 1972). Other than the statement in paragraph 25 of the Complaint that the ECJAC decision "necessarily required the affirmative vote or votes of the delegates of the Defendant ECT," there are no factual allegations to support the conclusory allegation of collusion. Second, the ECT does not owe a duty of fair representation to the plaintiffs under the facts alleged. The ECT is not a party to the NMFA or the Supplement. It is not the exclusive bargaining representative of the plaintiffs. The union members of the ECJAC are not delegates of the ECT, as plaintiffs allege, but merely "delegates from the Eastern Conference Area," according to Article 45, §2 of the Supplement. Plaintiffs theory of the existence of a duty in the ECT under these circumstances is not supported by any authority of which this court is aware.

For the reasons stated herein, the motions of the defendants to dismiss the Complaint will be granted. An appropriate order follows.

...../s/ BARRON P. McCUNE.....
 Barron P. McCune
 United States District Judge

Dated: February 2, 1978.
 cc: Counsel of record.

IN THE
United States District Court
 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TEAMSTERS LOCAL UNION
 NO. 30 and TOM SEVER and
 all others similarly situated,
Plaintiffs

vs.

HELMS EXPRESS, INC., a
 division of RYDER TRUCK
 LINES, and the EASTERN CONFERENCE OF TEAMSTERS,
Defendants

Civil Action
 No. 77-1177

ORDER

AND NOW, February 2, 1978, upon the consideration of motions filed by the defendants, Helms Express, Inc. and the Eastern Conference of Teamsters, to dismiss the Complaint, the motions are granted and the Complaint is hereby dismissed.

...../s/ BARRON P. McCUNE.....
 Barone P. McCune
 United States District Judge

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APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 78-1404

TEAMSTERS LOCAL UNION NO. 30, AND TOM
SEVER and all others similarly situated,
Appellants,

v.

HELMS EXPRESS INC., a div. of RYDER TRUCK
LINES, and the EASTERN CONFERENCE OF
TEAMSTERS

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA
(D.C. Civil No. 77-1177)

Submitted Under Third Circuit Rule 12(6)
November 17, 1978

Before: ALDISERT and HUNTER, *Circuit Judges*, and GERRY,
*District Judge.**

(Opinion filed January 5, 1979)

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OPINION OF THE COURT

ALDISERT, *Circuit Judge.*

This appeal requires us to decide the propriety of an arbitration award handed down by the Eastern Conference Joint Area Committee (ECJAC), a joint union-employer committee designed to resolve disputes in the trucking industry in a fifteen state area in the Eastern United States. The district court dismissed the complaint seeking to set aside the award which had denied a grievance brought by International Brotherhood of Teamsters Local Union No. 30 and certain of its members against Helms Express, Inc., a division of Ryder Truck Lines. The grievants have appealed. We affirm.

Appellants accept the general principle that courts should refuse to review the merits of an arbitration award where the parties have contractually agreed to be bound by the arbitrator's decision, *United Steelworkers of America*

v. Warrior & Gulf Navigation Co., 363 U.S. 574, 580-83 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960), but seek to apply three exceptions to this precept. First, they assert that the ECJAC award is invalid because it does not "draw its essence from the collective bargaining agreement" and therefore is the product of an abuse of arbitral authority; second, that an ECJAC award should not deserve the same degree of judicial deference as an award by a third party arbitrator; and, third, that the award is invalid because the Eastern Conference breached its duty of fair representation, *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 571 (1976).

I.

To understand the nature of the grievance and the arbitration machinery, it is necessary first to examine the controlling provisions of the collective bargaining agreement entered into by the Teamsters, including Local 30, of which Tom Sever, the individual grievant, is a member. Helms, which employs Sever, and Local 30 are parties to the National Master Freight Agreement (NMFA) and the Joint Council No. 40 Local Cartage Supplemental Agreement. The NMFA is the product of multi-employer bargaining between Trucking Employers, Inc. and the Teamsters National Freight Industry Negotiating Committee, which represents local unions, including Local 30, affiliated with the International Brotherhood of Teamsters. Both the local unions and the Teamsters National Freight Industry Negotiating Committee are parties to the NMFA. This industry-wide agreement is supplemented by certain local agreements, which specify additional terms and conditions applicable only to specified employers and local unions. In the instant case, the NMFA incorporates the supplement between the Western Pennsylvania Motor Carriers Association and the Teamsters Joint Council No. 40 Freight Division (Supplement), representing specified

local unions including Local 30. The NMFA and the Supplement constitute the entire collective bargaining agreement between the parties to that contract and contain a mandatory procedure for the resolution of all disputes between the parties.

Article 45 of the Supplement creates a joint area grievance committee, known as the Western Pennsylvania Teamsters and Employers Joint Area Committee, consisting of three representatives appointed by the employers. It also creates the Eastern Conference Joint Area Committee, similarly consisting of delegates of the local unions and the employers from the Eastern Conference area. Under Section 3 of Article 45 these two committees are charged with the responsibility of settling disputes which cannot be settled between the employer and the local union in the earlier stages of the grievance machinery.

The mechanics of the grievance machinery are set forth in Section 1 of Article 46 of the Supplement. That section specifies several preliminary steps to be followed by the parties in an attempt to adjust the matter short of a hearing. In the event the matter cannot be so adjusted, a hearing is held before the Western Pennsylvania Joint Area Committee which attempts to decide the matter by majority vote. If a majority vote is reached, no appeal may be taken and the decision is final and binding on both parties. If the Western Pennsylvania Joint Area Committee deadlocks, the matter is referred to ECJAC which, again by a majority vote, attempts to settle the dispute.¹ If the dispute is settled, the decision of ECJAC is final and binding on both parties and there is no right to a further appeal.² Section 1(a) of Article 8 provides that requests for inter-

1. Discharge cases are handled differently in that the local union may appeal the matter to an independent arbitrator, rather than proceeding to ECJAC.

2. The NMFA also creates in Section 1(b) of Article 8 a National Grievance Committee composed of an equal number of employer and union representatives. Matters which are deadlocked after the completion of the prior steps of the grievance procedure are referred to the National Grievance Committee for resolution. When the National Committee deadlocks, the parties may resort to economic pressure or litigation.

pretation of the NMFA shall be submitted directly to the Conference Joint Area Committee (here, ECJAC) for the making of a record on the matter, after which the matter shall be immediately referred to the National Grievance Committee for resolution. Otherwise, the contract provides that all factual grievances or questions of interpretation arising under the Supplement, or factual grievances arising under the NMFA, shall be processed in accordance with the grievance procedure of the Supplement. Thus, a grievance which a local union chooses to process through the local grievance machinery can be referred to the National Grievance Committee *only* if the Conference Joint Area Committee deadlocks.

Unlike more restrictive arbitration provisions found in some labor agreements, the scope of the authority of the Joint Area Committees under the NMFA is extremely broad. The function of the Joint Area Committees, as set forth in the Supplement, is to "settle" disputes. In Section 3 of Article 45, it is stated that "it shall be the function of the various Committees above referred to to settle disputes which cannot be settled between the employer and the local union in accordance with the procedures established in Section 1 of Article 46." Appendix at 63.

II.

The instant dispute arises over the application of Article 20 of the NMFA, which states, in pertinent part:

The Union, its members and the Employer agree at all times as fully as it may be within their power to further their mutual interest and interests of the trucking industry and the International Brotherhood of Teamsters nationwide. The Union and the Employer recognize the principle of a fair day's work for a fair day's pay; that jobs and job security of employees working under this Agreement are best protected through efficient and productive operations of the Employer and

the trucking industry. The Employer may establish reasonable work standards which shall take into account all factors relating to the work assignment, run, terminal and territorial operational conditions, subject to agreement and approval with the Local Union, and to be filed for approval with the Conference Joint Area Committee.

Appendix at 52. The grievance involves the implementation of productivity standards by Helms, Local 30's objection to those standards, and a subsequent determination of their validity by ECJAC.

The complaint filed in the district court alleges that on or about October 22, 1976, appellant Sever was informed by Helms that his productivity fell below a certain standard, and that he was being suspended without pay for a period of one day. Approximately ten other employees received similar suspensions for failure to meet the productivity standards. It is alleged that the productivity standards or measurement program were enacted unilaterally by Helms without negotiation, agreement, or approval by the local union. It is also alleged that this productivity standard or measurement program did not take into account all the factors referred to in Article 20.

After being informed of the deficiencies in their productivity, Sever and the other employees complained to Local 30, which filed grievances on their behalf. Local 30 and Helms agreed that Sever's grievance would serve as the pilot grievance, with its result to be controlling upon the other employees. The grievance procedure set forth in the Supplement was followed. The Western Pennsylvania Joint Area Committee deadlocked, however, and the case was referred to ECJAC.

The grievance was then presented at an ECJAC meeting in Virginia in April 1977. After hearing a presentation by both Helms and Local 30, ECJAC rendered the following decision:

The panel in executive session, motion made, seconded and carried that, due to the company's failure to obtain agreement with the local union or approval of this committee prior to putting into effect the productivity measurement program, the specific claims listed in this case are upheld on the basis of 8-hours' pay for each day of suspension. The committee further ruled that the productivity measurement program, as presented, is not in violation of the contract and may be implemented beginning May 1, 1977. Cost split.

Appendix at 6, 13.

Under the terms of the Supplement, this decision by ECJAC was final and binding upon the parties, and no appeal could be taken. However, Local 30's president wrote to the Teamsters International Union, and attempted to appeal the decision and obtain a rehearing. The matter was referred by the International back to ECJAC, which ruled that the original decision was "final and binding." Appendix at 6-7, 16-17.

After exhausting the contractual grievance procedure without obtaining a favorable result, Local 30 and Sever filed a complaint in the district court pursuant to section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), seeking to set aside the decision of ECJAC. The complaint alleged that the productivity standards were enacted in violation of the NMFA; that the Eastern Conference violated its "duty of fair representation" to Local 30 and its members by its "conscious collusion" with the employer representatives on the ECJAC, and by failing to uphold the grievance of the plaintiffs or to consider the collective bargaining agreement; that the decision of ECJAC was beyond its authority under the NMFA, in that it was not adequately grounded in nor did it draw its essence from the basic collective bargaining agreement; and that the ECJAC decision was arbitrary, capricious and internally inconsistent because the procedures employed failed to meet basic standards of fairness, Appendix at 7-8.

Local 30 and Sever filed an application for a temporary restraining order and a preliminary injunction. A hearing was held before Judge Daniel J. Snyder, Jr., at which certain evidence was introduced and oral argument by counsel was had. Thereafter, appellants Local 30 and Sever withdrew their request for a temporary restraining order. Subsequently Helms and Eastern Conference filed motions to dismiss, which were granted by Judge Barron P. McCune.

III.

In arguing that the ECJAC award is invalid because it does not "draw its essence from the collective bargaining agreement," appellants urge that we apply the decision in *International Brotherhood of Teamsters, Local 249 v. Western Pennsylvania Motor Carriers Ass'n*, 574 F.2d 783 (3d Cir. 1978), as controlling precedent here. Appellants characterize the facts there as "almost identical to the matter now before this court." Appellants' brief at 2. We disagree. Appellants exaggerate the limited precedential effect of that case. The narrow issue presented there was the interpretation of a collective bargaining agreement clause that gave ECJAC authority over "inadvertent or bona fide errors made by the Employer(s) or the Union in applying the terms and conditions" of the agreement. 576 F.2d at 788. The background of alleged "inadvertent or bona fide error" was the common industry "spotting" practice whereby a carrier may instruct a driver to leave his trailer at a specified location, and not to remain with it during loading or unloading. Although "spotting" is a widespread practice, it had not been followed in Allegheny County, Pennsylvania, where it has traditionally been the subject of collective bargaining discussions. The record indicated that, with the exception of a few designated terminal facilities, the peculiar Allegheny County practice had been "in existence since the 1958 collective bargaining agreement." *Id.* at 785. Accordingly, we held that a practice of almost 20 years duration did not amount to an "in-

advertent or bona fide" error, thus divesting ECJAC of jurisdiction under the proffered theory.

Moreover, in *Teamsters Local 249* we reiterated the basic precepts which govern judicial review of labor arbitration awards: (1) courts have a limited role in reviewing an arbitrator's award; (2) the award will be set aside only if it does not draw its essence from the collective bargaining agreement; and (3) it will not be disturbed unless it can in no rational way be derived from the agreement or unless there is a manifest disregard of the agreement, totally unsupported by principles of contract construction and the law of the shop. *Id.* at 786 (citations omitted).

IV.

Measured by these precepts, we agree with the district court that ECJAC had jurisdiction to review the particular grievance in the case at bar, because the award can "in [a] rational way be derived from the agreement, viewed in the light of its language, its context, and . . . other indicia of the parties' intention." *Ludwig Honold Mfg. Co. v. Fletcher*, 405 F.2d 1123, 1128 (3d Cir. 1969).

Article 20 of the NMFA provides: "The Union and the Employer recognize the principle of a fair day's work for a fair day's pay." Appendix at 52. Article 47 allows an employer to discharge or suspend employees only for "just cause," Appendix at 64; clearly poor performance and productivity on the part of an employee would qualify as "just cause."

The agreement permits each employer to establish reasonable productivity standards and assumes that a local union would agree to and approve a reasonable productivity standard. It explicitly provides that following the local's approval, the standard shall "be filed for approval with the Conference Joint Area Committee." If ECJAC must ratify the local union's approval, it seems to be a rational interpretation of the contract that if the local union does not approve, as here, ECJAC nevertheless has

authority to review the productivity standard prior to implementation by the employer. To hold otherwise would vest in the local union an arbitrary, unreviewable right to disapprove productivity standards under Article 20 of the NMFA. ECJAC's award here is merely action that decides "unforeseen or unresolved problems arising out of gaps . . . in the contract," a practice we specifically approved in *Price v. International Brotherhood of Teamsters*, 457 F.2d 605, 610 (3d Cir. 1972).

V.

Although appellants concede that both the Supreme Court and this court have approved decisions rendered by the trucking industry's joint labor-management grievance committee, it nevertheless argues that we should not accord to ECJAC "the same, identical degree of judicial deference customarily accorded awards rendered by impartial arbitrators when challenged by employees." Appellants' brief at 14. Assuming that Local 30, a party to the NMFA, is not estopped from challenging a provision in the collective bargaining agreement—and this is a very generous assumption—we will not tarry long on this point because it is no longer an open question. "Joint committee awards are reviewed under the same standards as binding arbitration awards. *General Drivers, Warehousemen & Helpers, Local Union No. 89 v. Riss & Co., Inc.*, 372 U.S. 517, 83 S. Ct. 789, 9 L. Ed. 2d 918 (1963); *Bieski v. Eastern Automobile Forwarding Co.*, 396 F.2d 32 (3d Cir. 1968). See *Price v. Teamsters*, 457 F.2d 605 (3d Cir. 1972)." *Teamsters Local 249, supra*, 574 F.2d at 786 n.3. Moreover, we had previously stated that:

It is not arbitration per se that federal policy favors, but rather final adjustment of differences by a means selected by the parties. If the parties agree that a procedure other than arbitration shall provide a conclusive resolution of their differences, federal labor policy encourages that procedure no less than arbitra-

tion. A determination made pursuant to that chosen procedure is no less enforceable in a federal court than is an arbitration award.

United Mine Workers of America, District No. 2 v. Barnes & Tucker Co., 561 F.2d 1093, 1096 (3d Cir. 1977).

VI.

Finally, we address appellants' contention that the district court erred in dismissing their action against the Eastern Conference for breach of the duty of fair representation. Appellants correctly premise this argument with the proposition that a court may review the merits of an arbitration award where the union presenting the grievance has breached its duty of fair representation, *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 567 (1976), and that section 301 of the Labor Management Relations Act may provide the jurisdictional basis for employee suits against employers and labor organizations. That section provides that "[s]uits for violation of contracts between an employer and a labor organization representing employees . . . may be brought in any district court" 29 U.S.C. § 185(a). The prerequisite for jurisdiction is a contract between an employer and a labor organization. *Smith v. Evening News Ass'n*, 371 U.S. 195, 200 (1962). However, § 301 creates federal jurisdiction only over parties to the contract, and federal jurisdiction under § 301 is limited to "[s]uits for violation of contracts between an employer and a labor organization" 29 U.S.C. § 185. Thus in *Aacon Contracting Co. v. Ass'n of Catholic Trade Unionists*, 178 F. Supp. 129 (E.D. N.Y. 1959), claiming that the defendant union attempted to compel plaintiff to breach a collective bargaining agreement it had with another union, plaintiff attempted to assert federal jurisdiction over the dispute even though there was no contractual relationship between plaintiff and defendant. The complaint was dismissed and the Second Circuit af-

firmed, 276 F.2d 958 (2d Cir. 1960), on the opinion of the trial judge: "The language of the statute is explicit. It specifically refers to suits for violation of contracts between an employer and a labor organization. In this case there is no contractual relationship between the parties." 178 F. Supp. at 130. While clearly this does not prevent Sever, as an individual member of a signatory union from claiming under § 301, *Smith v. Evening News Ass'n*, *supra*, 371 U.S. at 200, he may only bring suit against the parties signatory to the agreement, and here the Eastern Conference is not a party.

The Eastern Conference is not a party to any collective bargaining agreement and represents no employees directly; it has never been a party to any contract with Helms. The NMFA and Supplement specifically state that only the Teamsters National Freight Industry Negotiating Committee and specific local unions are parties to the Agreement, Appendix at 38. Similarly, the preamble to the Supplement lists the parties by name, indicating only that they are affiliated with the Conference and the International Union. Neither the Conference nor the International are signatories. Thus, because the Eastern Conference is not a party to the contract, the district court lacked jurisdiction under § 301 over the Conference.

More important, the duty of fair representation is implied from the congressional grant of exclusive recognition accorded the labor organization selected by a majority of the employees in an appropriate bargaining unit. 29 U.S.C. § 159(a). The duty of fair representation imposes on the statutory representative a duty to serve the interest of all bargaining unit employees without hostility to any. *Steele v. Louisville & Nashville Railroad*, 323 U.S. 192 (1944). The duty prohibits fraud, deceitful or dishonest conduct which "could not be otherwise regulated by the substantive federal law." *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 301 (1971); *Humphrey v. Moore*, 375 U.S. 335, 348 (1964). But the parties to the NMFA, in-

cluding Local 30, did not make the Conference the statutory representative of any employees. The contract states that "the National Union Committee and Local Unions . . . are the exclusive representatives of all employees" covered by the Agreement. Appendix at 40, 41-42. The contract clearly obligates the local unions, not the Conference, to process the grievances of all employees within their jurisdiction, Appendix at 63. As the complaint alleges, it is clear that Local 30 "has been the exclusive collective bargaining representative of the individual plaintiffs," Appendix at 3, and, accordingly, it is Local 30 and not the Eastern Conference that owes a duty of fair representation to its members employed at Helms. *Walters v. Roadway Express, Inc.*, 400 F. Supp. 6, 16 (S.D. Miss. 1975), *aff'd in part*, 557 F.2d 521 (5th Cir. 1977); *Brooks v. Southwestern Transportation Co.*, 97 L.R.R.M. 2616, 2618 (N.D. Tex. 1978); *Hughes v. Shoreline Beverage Distributing Co.*, 85 L.R.R.M. 2071, 2072 (S.D. Cal. 1973).

VII.

Because this case follows quickly on the heels of *Teamsters Local 249*, it is imperative that we emphasize again both the limited precedential effect of that case and the oft-stated imperative of the Supreme Court: "'An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.'" *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960) (footnote omitted). Thus, the arbitral forum is the primary arena for the settlement of labor disputes." *United Steelworkers of America v. NLRB*, 530 F.2d 266, 273 (3d Cir.) (footnote omitted), *cert. denied sub nom. Dow Chemical Co. v. United Steelworkers of America*, 429 U.S. 834 (1976). Arbitration is the favored alternative forum for dispute resolution. *Gate-*

way Coal Co. v. UMWA, 414 U.S. 368, 377, 382 (1974); *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 226, 82 S. Ct. 1328, 8 L. Ed. 2d 440 (1962) (Brennan, J., dissenting) ("The arbitration process . . . [is] a kingpin of federal labor policy"); *Arlan's Department Store of Michigan, Inc.*, 133 N.L.R.B. 802, 808 (1961), *The Supreme Court, 1969 Term*, 84 HARV. L. REV. 30, 199 (1970); Note, *Labor Injunctions, Boys Markets, and the Presumption of Arbitrability*, 85 HARV. L. REV. 636, 637 (1972).

We reiterate the basic tenets of contemporary labor policy as have been summarized by the Supreme Court and this court: (a) today's interdependent and technologically advanced economy dictates that labor-management relations be as peaceful as possible; (b) where labor and management agree on a forum for the peaceful resolution of disputes, that agreement should be honored; (c) arbitration is the favored alternative forum for dispute resolution; and (d) congressional emphasis in labor legislation has shifted from protection of the nascent labor movement to the encouragement of collective bargaining and to administrative techniques for the peaceful resolution of industrial disputes. See cases and authorities collected in *Steelworkers v. NLRB*, *supra*, 530 F.2d at 275; see also *Republic Steel Corp. v. U.M.W.A.*, 570 F.2d 467, 473 (3d Cir. 1978).

The joint labor-management committees created under the collective bargaining agreements between the Teamsters and the freight industry reflect a mature and enlightened method to resolve industrial disputes. These institutions implement the national labor policy as mandated by Congress and will be given maximum respect by the courts.

The judgment of the district court will be affirmed.

A True Copy:

Teste:

*Clerk of the United States Court of Appeals
for the Third Circuit*

(A.O. U. S. Courts, International Printing Co., Phila., Pa.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three true and correct copies of the foregoing Petition for Writ of Certiorari were served upon each of the following by first class mail, postage prepaid this 6th day of June, 1979:

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No. 78-1823

Supreme Court, U. S.

FILED

JUL 6 1979

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

TEAMSTERS LOCAL UNION NO. 30,
and TOM SEVER and all others similarly situated,

Petitioners,

v.

HELMS EXPRESS, INC.,
a division of Ryder Truck Lines, and the
EASTERN CONFERENCE OF TEAMSTERS,

Respondents.

ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED
STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION FOR THE
EASTERN CONFERENCE OF TEAMSTERS

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1b-14b)¹ is reported at 591 F.2d 211. The opinion and Order of the District Court (Pet. App. 1a-9a) are not officially reported.

1. "Pet. App." refers to the appendix to the Petition for a Writ of *Certiorari*. "A." references are to the appendix to the briefs below; a copy has been lodged with this Court. "S. App." references are to the appendix to this Brief in Opposition.

JURISDICTION

The opinion of the Court of Appeals is dated January 5, 1979. On March 8, 1979, the Court denied Petitioners' petition for rehearing. The Petition for a Writ of *Certiorari* was filed on June 8, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether it was error for the District Court to refuse to set aside a grievance-arbitration decision under a collective bargaining agreement in circumstances where there was no evidence of fraud, collusion, or breach of the duty of fair representation and the arbitration decision made meaningful the contractual principle of "a fair day's work for a fair day's pay" by approving work standards which the arbitrator considered reasonable.

STATUTE INVOLVED

The relevant provisions of the Labor-Management Relations Act, 29 U.S.C. §§ 173(d) and 185, are set forth at S. App. 1.

STATEMENT

A. Facts

On October 7, 1977, Teamsters Local Union No. 30 (hereafter "Local 30") and Tom Sever (hereafter "Sever") filed a Complaint pursuant to Section 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185(a), seeking to set aside a decision of the Eastern Conference Joint Area Committee (hereafter "the Committee" or "ECJAC"). The Complaint named as defendants Helms Express, Inc., a division of Ryder Truck Lines (hereafter "Helms") and the Eastern Conference of Teamsters (hereafter "Eastern Conference"). Helms, which employs Sever and other members of the asserted class, and Local 30 are parties to the National Master Freight Agreement (hereafter "NMFA") and the Joint Council No. 40 Local Cartage Supplemental Agreement (hereafter "Supple-

ment"). The Eastern Conference is an affiliate of the International Brotherhood of Teamsters and serves many constituent Local Unions, including Local 30.

The NMFA is the product of multi-employer bargaining between Trucking Employers, Inc. and the Teamsters National Freight Industry Negotiating Committee, which represents Local Unions, including Local 30, affiliated with the International Brotherhood of Teamsters (A. 38). Both the Local Unions and the Teamsters National Freight Industry Negotiating Committee are parties to the NMFA (A. 38). The NMFA is an industry-wide agreement which contains area supplemental agreements which specify additional terms and conditions applicable to employers and Local Unions in that area. In the instant case, the Supplement is between the Western Pennsylvania Motor Carriers Association and the Teamsters Joint Council No. 40 Freight Division, representing specified Local Unions, including Local 30. The NMFA and the Supplement constitute the entire collective bargaining agreement between the parties to that contract.

The NMFA and Supplement contain, *inter alia*, a mandatory procedure for the resolution of all disputes between the parties. Whenever a Local Union and an employer cannot settle a dispute, it must be referred to the Western Pennsylvania Joint Area Committee, consisting of three representatives appointed by the unions and three representatives appointed by the employers. A majority decision by the Committee is final and binding on both parties, with no appeal (A. 62-63).

When the Western Pennsylvania Committee deadlocks, the grievance is submitted to the ECJAC unless it involves a discharge. The Union Co-Secretary and the Employer Co-Secretary each appoint three representatives to the ECJAC panel. A majority decision of the ECJAC is final and binding, with no further appeal (A. 63). Cases deadlocked by the ECJAC are referred to the National Grievance Committee, whose decisions are also final and binding. When the National Committee deadlocks, the parties may resort to economic pressure or litigation (A. 44-45).

The instant dispute arises over the interpretation and application of Article 20 of the NMFA. That Article states, in pertinent part (A. 52):

The Union, its members and the employer agree at all times as fully as it may be within their power to further their mutual interests and interests of the trucking industry and the International Brotherhood of Teamsters nationwide. The Union and the employer recognize the principle of a fair day's work for a fair day's pay; the jobs and job security of employees working under this agreement are best protected through efficient and productive operations of the employer and the trucking industry. The employer may establish reasonable work standards which shall take into account all factors relating to the work assignment, run, terminal and territorial operational conditions, subject to agreement and approval of the local union, and to be filed for approval with the Conference Joint Area Committee.

The Complaint involves the implementation of productivity standards by Helms, Local 30's objection to those standards, and a subsequent determination of their validity by the ECJAC.

The Complaint alleges that on or about October 22, 1976, Plaintiff Tom Sever was informed by Helms that his productivity fell below a certain standard, and that he was being suspended without pay for a period of one day (A. 4, 10). Approximately ten other employees received similar suspensions for failure to meet the productivity standards (A. 4). It is alleged in the Complaint that the productivity standards or measurement program were enacted unilaterally by Helms without negotiation, agreement, or approval by the Local Union. It is also alleged that this productivity standard or measurement program did not take into effect all the factors referred to in Article 20 (A. 5).

After being informed of the deficiencies in their productivity, Sever and the other employees complained to Local 30, which filed grievances on their behalf (A. 5, 11). Local 30 and Helms agreed that Sever's grievance would serve as the pilot grievance, with its result to be controlling upon the other employees. The grievance procedure set forth in the Supplement was followed.

Before the Committee, the Company referred to scheduled meetings between the Company and Local 30 and Local 30's failure to cooperate. The Company argued that it disciplined additional employees only when Local 30 failed to cooperate and that the suspensions were based upon "low production when compared to their peers" (A. 12). The Western Pennsylvania Joint Area Committee deadlocked, however, and the case was referred to the ECJAC (A. 5, 12).

The grievance was then presented to an ECJAC meeting in Virginia Beach, Virginia, on April 27, 1977. The Complaint alleges that the same Committee heard 22 other grievances involving other Local Unions that same day (A. 6). After hearing a presentation by both Helms and Local 30, the ECJAC rendered the following decision (A. 6, 13):

The panel in executive session, motion made, seconded, and carried that, due to the company's failure to obtain agreement with the local union or approval of this Committee prior to putting into effect the productivity measurement program, the specific claims listed in this case are upheld on the basis of eight hours pay for each day of suspension. The Committee further rules that the productivity measurement program, as presented is not in violation of the contract and may be implemented beginning May 1, 1977. Cost split.

Under the terms of the Supplement, this decision by the ECJAC was final and binding upon the parties, and no appeal could be taken (A. 63). However, Local 30's President Walter Chrzan wrote to Frank Fitzsimmons, President of the Teamsters International Union, and attempted to appeal the decision and requested a rehearing (A. 6, 14-15). The matter was referred by the International back to the ECJAC for handling. The matter was taken up by the ECJAC at its July, 1977 meeting. It ruled that the original decision was "final and binding." (A. 6-7, 16-17).

After exhausting the contractual grievance procedure without obtaining a satisfactory result, Local 30 and Sever filed the instant Complaint, alleging that 100 employees have received warning letters and 25 employees have been suspended

following the implementation of the productivity standards on May 1, 1977 (A. 7, 18-21). The Complaint further alleged that the productivity standards were enacted in clear violation of the NMFA (A. 5), despite the fact that the ECJAC found that the productivity measurement program did not violate the contract and permitted its implementation (A. 6). The Complaint further alleged that the Eastern Conference of Teamsters violated its "duty of fair representation" to Local 30 and its members by its "conscious collusion" with the employer representatives on the ECJAC, and by failing to uphold the grievance of the Plaintiffs or to consider the collective bargaining agreement (A. 8). Also in conclusory fashion, the Complaint alleged that the decision of the ECJAC was beyond its authority under the NMFA: that it was not adequately grounded in, nor did it draw its essence from, the basic collective bargaining agreement; that it was arbitrary and capricious and internally inconsistent; and that the procedure employed in the instant grievances failed to meet basic standards of fairness (A. 7-8).

Local 30 and Sever filed an application for a temporary restraining order and a preliminary injunction. Following the introduction of certain evidence and oral argument by counsel, Plaintiffs Local 30 and Sever withdrew their request for a temporary restraining order (A. 1). Subsequently, both Defendants Helms and Eastern Conference filed Motions to Dismiss.

B. The District Court's Conclusions

The District Court concluded that "the ECJAC decision was rationally derived from the contract . . ." (Pet. App. 5a); that the ECJAC decided an issue which had been properly submitted to it (Pet. App. 6a-7a); and that the Eastern Conference did not breach a duty of fair representation in processing the grievance (Pet. App. 7a-8a). The District Court thereupon dismissed the Complaint.

C. The Court of Appeals' Conclusions

The Court of Appeals for the Third Circuit affirmed in a unanimous decision. The Court concluded that the "ECJAC's

award is merely action that decides 'unforeseen or unresolved problems arising out of gaps . . . in the contract'" (Pet. App. 10b); that a Committee award is entitled to as much deference as a neutral arbitrator's award (Pet. App. 10b-11b); and that the Conference owes no duty of fair representation to the Petitioners (Pet. App. 11b-13b).

The Court denied a Petition for Reconsideration.

ARGUMENT

In fiscal 1977, the FMCS provided arbitrators in 11,985 cases,² and the AAA provided arbitrators in an additional 14,661 cases.³ Innumerable other disputes are arbitrated before tribunals selected by other methods. If, as Petitioners request, this Court considers relaxing the limited standards for reviewing arbitration awards, dissatisfied grievants will flood the courts with requests to overturn adverse arbitration awards. Petitioners clearly seek to create a new basis for reviewing an arbitration award, for their arguments do not fall within the generally recognized rationales for setting aside an award.

1. Petitioners misapply the principle that courts considering a motion to dismiss must treat as admitted the well-pleaded allegations in the Complaint. The principle quite reasonably applies where, as in *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969), the court considers each case *de novo*. However, where the courts must consider the finality to be afforded an arbitration award, different principles apply. As this Court has long held, courts asked to overturn an arbitration award do not retry the facts submitted to the arbitrator. Rather, reviewing courts must first determine whether some fatal defect undermines the arbitrator's award, and, only if so, may they consider the merits

2. Federal Mediation and Conciliation Service, Thirtieth Annual Report, Fiscal Year, 1977, p. 38.

3. American Arbitration Association, 1977-1978 Annual Report, p. 13.

of the contractual grievance. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562-563, 570-572 (1976); *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598-599 (1960); *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 568 (1960). Here, the Complaint's allegations that the productivity standard was "unreasonable" and that Helms failed to discuss or negotiate the standards with the Local Union were precisely the arguments submitted to, and rejected by, the arbitrator (A. 12). These allegations, without more, are no different than the mere allegation that an employee was "unjustly discharged"; the court must ignore the underlying factual dispute until it concludes that the award must be set aside.

Simply stated, the reviewing courts properly accepted the arbitrator's award absent a fatal defect in the arbitration process. Here, as the District Court and the Court of Appeals both concluded, the arbitration process afforded Petitioners every protection required by law and there was no breach of the duty of fair representation. Petitioners have not challenged these conclusions.

2. Petitioners currently argue that the award "does not draw its essence from the contract" (Pet. App. at 7-10). However, the issue raised is not worthy of review by this Court. The principles applied by the Court of Appeals, are universally acknowledged; i.e., courts will enforce an award (1) which can in a "rational way be derived from the agreement, viewed in the light of the language, its context, and . . . other indicia of the parties' intention" (Pet. App. 9b) and (2) which decides "unforeseen or unresolved problems arising out of gaps . . . in the contract" (Pet. App. 10b). See, e.g., *Crigger v. Allied Chemical Corp.*, 367 F. Supp. 1133, 1138-1139 (S. D. W. Va. 1973), *aff'd.*, 500 F.2d 1218, 1219 (4th Cir. 1974); *Auto Workers v. White Motor Corp.*, 505 F.2d 1193, 1198-1199 (8th Cir. 1974), *cert. denied*, 421 U.S. 921 (1975); *Machinists v. Modern Air Transport, Inc.*, 495 F.2d 1241, 1244 (5th Cir. 1974), *cert. denied*, 419 U.S. 1050; *Newspaper Guild v. Tribune Publishing Co.*, 407 F.2d 1327, 1328 (9th Cir. 1969); *Electrical Workers v. Peerless Pressed Metal Corp.*, 489 F.2d 768, 769 (1st Cir. 1973). See also Feller, "Arbitration: The Days of Its Glory are Numbered", 2 *Industrial Relations Law Journal*, 97, 104-105 (1977).

Within this legal framework, the issue in each case is one of fact: whether the arbitrator's award "draws its essence" from the contract. Of course, this Court has denied *certiorari* where review is sought of a lower court decision which turns solely upon an analysis of the particular facts involved, or upon the construction of a particular contract. *United States v. Johnston*, 268 U.S. 220, 227 (1925).

3. There is no conflict between circuits which warrants a grant of *certiorari* in the instant case. In *Detroit Coil Co. v. Machinists, Lodge 82*, 594 F.2d 575 (6th Cir. 1979), the court applied the legal standards used by the Third Circuit, but reached a contrary result because of facts peculiar to that case and that contract. There, the union's timely letter requesting arbitration was not received within the time limits set forth in the contract. The arbitrator held, with the District Court's approval, that, under the facts presented, timely mailing was sufficient, but the Sixth Circuit disagreed, finding the contract silent on the issue. No other clause in the contract was remotely applicable to the issue. Assuming, *arguendo*,⁴ that *Detroit Coil* was correctly decided, it is clearly distinguishable from the instant case.

Here, the contract is silent on the possibility that a union will wrongfully refuse to meet with an employer to discuss production standards. But the contract does give the ECJAC authority to define "just cause" for discipline and the parameters of "a fair day's work for a fair day's pay" (A. 62) and to "settle" disputes. Local 30 specifically raised precisely these issues by arguing that Sever "worked at an acceptable level" (A. 12). The ECJAC held that there was no "just cause" for discipline in the case presented because there had been no prior approval of the productivity standards, and no evidence that the standards had been announced prior to the imposition of discipline. At the same time, the Committee recognized that all contractual benefits are premised on a "fair day's work" and that failure to perform up to a reasonable standard must constitute "just cause" for discipline. Rather than consider an endless parade of cases, the Committee then considered productivity standards for pro-

4. On the other hand, we submit *certiorari* is more appropriate in *Detroit Coil* than in the instant case.

spective application only. After reviewing the standards proposed by the Company, it concluded that they were "not in violation of the contract," (i.e., not unreasonable (A. 62)) and that, henceforth, violation of those standards would constitute "just cause" for future discipline. The new standard would become effective only after notice to all affected employees. *Cf. Miranda v. Arizona*, 384 U.S. 436, 478-479 (1966), where the Court promulgated standards it would apply in future cases.

Considered in this light, the Third Circuit did not conclude that the ECJAC decision was in "manifest disregard of the agreement" or irrationally drawn from the contract. Moreover, its decision is consistent with *Cooper-Jarrett, Inc.*, 239 NLRB No. 117 (1978), where the National Labor Relations Board reached a similar result in a case involving the same contract provision.

CONCLUSION

For the reasons stated herein, the Petition for Writ of *Certiorari* should be denied.

Respectfully submitted,

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July, 1979

APPENDIX A

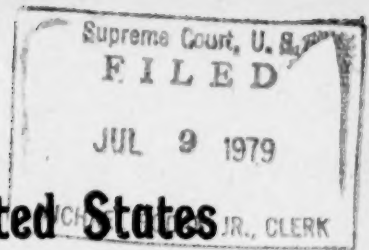
STATUTES INVOLVED

29 U.S.C. § 173(d)

Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

29 U.S.C. § 185

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.



IN THE
Supreme Court of the United States

October Term, 1978

No. 78-1823

**TEAMSTERS LOCAL UNION NO. 30, and TOM SEVER and
All Others Similarly Situated,**

Petitioners,

v.

**HELMS EXPRESS, INC., a Division of Ryder Truck Lines,
and the EASTERN CONFERENCE OF TEAMSTERS,**

Respondents.

**On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Third Circuit.**

**BRIEF OF RESPONDENT HELMS EXPRESS,
A DIVISION OF RYDER TRUCK LINES
IN OPPOSITION TO PETITION FOR CERTIORARI.**

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IN THE Supreme Court of the United States

October Term, 1978

No. 78-1823

TEAMSTERS LOCAL UNION NO. 30, and
TOM SEVER and all others similarly situated
Petitioners,

v.

HELMS EXPRESS, INC. a division of Ryder Truck Lines,
and the EASTERN CONFERENCE OF TEAMSTERS
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF RESPONDENT HELMS EXPRESS,
A DIVISION OF RYDER TRUCK LINES
IN OPPOSITION TO PETITION FOR CERTIORARI.

The respondent Helms Express, a division of Ryder Truck Lines, respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Third Circuit's opinion in this case.

OPINION BELOW.

The opinion of the Court of Appeals, reproduced in the Petition for a Writ of Certiorari, is reported at 591 F. 2d 211 (3d Cir. 1978) and 100 LRRM 2421 (3d Cir. 1978). The opinion of the District Court is reported at 97 LRRM 2798 (W. D. Pa. 1978).

STATUTORY PROVISIONS INVOLVED.

This case does not involve the application or interpretation of any constitutional provision, treaty, statute, ordinance, or regulation.

STATEMENT OF QUESTIONS PRESENTED.¹

1. Whether an award of a joint labor/management grievance committee, which was contractually obligated to settle disputes presented to it, permitting the prospective implementation of a productivity measurement program by an employer drew its essence from the collective bargaining agreement.

2. Whether the conclusory allegations of the local union's Complaint seeking to set aside and vacate an arbitrator's award, to the effect that a productivity measurement program enacted by an employer was unreasonable and in violation of the collective bargaining agreement, must be taken as admitted on a motion to dismiss the Complaint under F. R. Civ. P. 12(b)(6).

1. As discussed *infra*, the Petition for a Writ of Certiorari in this case did not set forth the questions presented for review, in violation of Rule 23(1)(c) of this Court's Rules. The Statement of Questions Presented herein is therefore based upon inferences drawn by Respondent from the arguments in the Petition and the opinion of the Third Circuit below.

STATEMENT OF THE CASE.

Petitioner Teamsters Local 30 is a labor organization and is the sole and exclusive bargaining representative of the individuals employed as dock workers at the Irwin, Pennsylvania freight terminal of Respondent Helms Express. Helms Express is a common freight carrier certified by the Interstate Commerce Commission. Respondent Eastern Conference of Teamsters is a subordinate body of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America composed of Teamster unions from the eastern sector of the United States.

Petitioners' Complaint in the district court sought to set aside and vacate a final and binding decision of the Eastern Conference Joint Area Committee, a joint union/management committee established by the collective bargaining agreement for the resolution of grievances and disputes under that agreement. The decision of the Conference, as discussed below, upheld the implementation of a productivity measurement program by Helms.

The relationship between Helms and Local 30 was governed at the time the instant litigation arose by the National Master Freight Agreement and the Joint Council No. 40 Local Cartage Supplemental Agreement² for the period April 1, 1976 to March 31, 1979. The NMFA is a product of multi-employer bargaining between trucking employers and the Teamsters National Freight Industry Negotiating Committee, which represents local unions, including Local 30, affiliated with the International Brotherhood of Teamsters.

2. The National Master Freight Agreement and the Local Supplement will be referred to collectively herein as the "NMFA." Although the contract governing the instant litigation expired on March 31, 1979, the provisions of the contract referred to herein were included in the subsequent contract without change.

Article 45 of the NMFA creates two joint area grievance committees, known as the Western Pennsylvania Teamsters and Employers Joint Area Committee ("WPJAC") and the Eastern Conference Joint Area Committee ("ECJAC"), consisting of delegates of the local unions and the employers from the Western Pennsylvania Eastern Conference Area respectively. Under Section 3 of Article 45 these two committees are charged with the responsibility of settling disputes which cannot be settled between the employer and the local union in the earlier stages of the grievance machinery. Matters which are deadlocked through the WPJAC, with the exception of discharge cases, are referred to the ECJAC. A decision rendered by the ECJAC is expressly made final and binding upon the parties, with no right to further appeal, both under the contract and the Form submitting the grievance to the ECJAC.

The dispute in the instant matter arose over the interpretation and application of Article 20 of the NMFA. That Article reads in relevant part as follows:

The Union, its members and the employer agree at all times as fully as it may be within their power to further their mutual interests and the interests of the trucking industry and the International Brotherhood of Teamsters nationwide. The union and the employer recognize the principle of a fair day's work for a fair day's pay; that jobs and job security of employees working under this agreement are best protected through efficient and productive operations of the employer and the trucking industry. The employer may establish reasonable work standards which shall take into account all factors relating to the work assignment, run, terminal and territorial operational conditions, subject to agreement and approval of the local

union, and to be filed for approval with the Conference Joint Area Committee.

The dispute giving rise to the instant litigation concerned the implementation of a productivity measurement program by Helms Express, the Union's objection to that program, and a subsequent determination of its validity by the ECJAC.

According to the allegations of the Complaint filed in the district court, in October, 1976 Helms Express was implementing a productivity measurement program for its dock employees based upon peer comparisons. In accordance with a progressive discipline system associated with the program Petitioner Tom Sever and ten other employees were suspended without pay for low productivity. Local 30 filed grievances on behalf of each of the eleven disciplined employees, alleging that the suspensions were improper and that the productivity measurement program violated the above-quoted Article 20 of the NMFA. While the grievances were being processed Local 30 and Helms agreed that the Sever grievance would serve as a pilot grievance and that its result would control the result of the others. The grievance proceeded through the steps specified in the NMFA to the WPJAC, which was unable to reach a decision. Under the terms of the NMFA, the matter was therefore referred to the ECJAC for resolution.

On April 27, 1977 the Sever grievance was presented to a panel of the ECJAC. The decision reached by the ECJAC was as follows:

The panel in executive session, motion made, seconded and carried that, due to the company's failure to obtain agreement with the local union or approval of this committee prior to putting into effect the pro-

ductivity measurement program, the specific claims listed in this case are upheld on the basis of 8-hours' pay for each day of suspension. The committee further rules that the productivity measurement program, as presented, is not in violation of the contract and may be implemented beginning May 1, 1977. Cost split.

On October 7, 1977 the action in the district court was commenced seeking to set aside and vacate the award of the ECJAC. The district court dismissed the action for failure to state a claim upon which relief could be granted, and that dismissal was affirmed by the Third Circuit Court of Appeals.

The Third Circuit held that the award of the ECJAC drew its essence from the NMFA because Article 20 invested the ECJAC with the authority to approve a local union's ratification of productivity standards. Implicit in this authority was a corresponding power to review and approve such standards in the absence of local union agreement because to hold otherwise would "vest in the local union an arbitrary, unreviewable right to disapprove productivity standards." 591 F. 2d at 216. The court further held that the award of the ECJAC decided an unforeseen problem arising out of a gap in the contract, and was thus rationally based in the contract. The award therefore drew its essence from the collective bargaining agreement and was not subject to a review on the merits by the district court.

REASONS FOR DENYING THE WRIT.

I. Certiorari Should Be Denied for the Reason That the Petition in This Case Does Not Comply With the Requirements of Rule 23(1)(c) of This Court.

Rule 23 of the Rules of this Court sets forth the matters which must be included in a Petition for a writ of certiorari. Section 1(c) of that Rule specifies that the Petition shall include a statement of the questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. That provision further states that only the questions set forth in the Petition or fairly comprised therein will be considered by the Court.

The Petition filed in the instant case does not set forth the questions presented for review, and is therefore in violation of Rule 23(1)(c). This failure to comply with the Rule is far more than a mere technical violation. The statement of the questions presented for review is an integral and necessary part of any Petition for certiorari. It permits this Court to focus specifically upon the narrow question or questions as to which the Petitioner submits discretionary review is appropriate, and permits this Court to apply the standards set forth in Rule 19 setting forth the considerations governing review on certiorari. The statement of the questions presented for review also permits the parties opposing the Petition for certiorari to narrow the focus of their arguments in opposition to the granting of the writ, and to avoid the presentation of unnecessary and extraneous factual and legal arguments to this Court.

The Rules of this Court were not drafted haphazardly; each rule has a purpose related to the efficient and effective

functioning of the Court. The Petitioners' failure to comply with one of the most basic rules of this Court, and the resulting prejudice to the Court and the respondent, fully warrants a denial of the Petition.

II. Certiorari Should Be Denied for the Reason That the Issues Involved Are of No Great Importance to the Public.

In reaching its decision the Third Circuit considered a specific arbitration award, based upon specific factual presentations made by the respective parties in the course of the grievance procedure, and applied to those specific facts certain general principles articulated by this Court in *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U. S. 574 (1960) and *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U. S. 593 (1960). Those principles, dealing with the finality to be accorded a labor arbitrator's award, were followed faithfully, and upon the facts presented the Third Circuit concluded that the arbitrator's award did draw its essence from the collective bargaining agreement between Helms and Local 30. Moreover, in giving the same deference to the decision of the ECJAC, a joint union/management committee, as would be given to an independent arbitrator, the court faithfully followed this Court's teaching in *General Drivers, Warehousemen and Helpers, Local Union No. 89 v. Riss & Co., Inc.*, 372 U. S. 517 (1963).

As Petitioner correctly points out, the public has an important interest in seeing that the federal labor policy favoring arbitration as a means of settling industrial disputes is given full deference by federal courts. In the instant case, however, the Third Circuit clearly articulated and followed that policy. Its decision turned not upon a failure by that Court to follow the recognized and ac-

cepted principles of federal labor policy, but upon the unique facts of the case presented to it.

The Complaint filed by Petitioners in the district court referred to a specific factual grievance and to specific language of the collective bargaining agreement governing the grievance. The ECJAC held that the productivity measurement program which was described in the Complaint met all of the requirements of Article 20 of the NMFA, and permitted its implementation prospectively from the date of the award. The Third Circuit held that the award of the ECJAC properly reflected its mandate in the collective bargaining agreement to "settle disputes" referred to it. The court was therefore precluded from reviewing the award on its merits. The question presented to the Third Circuit turned almost exclusively upon the specific facts giving rise to the grievance, as articulated in the Petitioners' Complaint, and upon the somewhat unusual language of the collective bargaining agreement giving the ECJAC broad discretion to "settle disputes" rather than simply to render a decision on grievances. Thus, because of the unique factual circumstances, the outcome of the case in the court below was of importance solely to the litigants in this action. The public at large will remain unaffected by the decision of the Third Circuit, as will all other litigants, unless an almost identical situation should arise under the same collective bargaining agreement. Even in such a case, however, the litigants would be entitled to submit the matter anew to the grievance and arbitration procedure of the collective bargaining agreement, and would be entitled to an independent review of the merits of the subsequent grievance. As this Court has consistently held, it does not "grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U. S. 220, 227 (1925). Accordingly, certiorari should be denied.

III. Certiorari Should Be Denied for the Reason That the Decision of the Court Below Is Not in Conflict With Any Decision of Any Other Circuit Court.

One of the grounds asserted in support of the instant Petition is an alleged conflict between the decision of the Third Circuit and the decision of the Sixth Circuit in *Detroit Coil Co. v. Machinists, Lodge 82*, — F. 2d —, 100 LRRM 3138 (6th Cir. 1979). Although the Sixth Circuit in *Detroit Coil Co.* reached a result different from that of the Third Circuit and refused to attribute finality to the award of an independent arbitrator, that difference in result does not establish a "conflict" between the two courts. Were that the case, few actions would not be subject to discretionary review by this Court.

As this Court has held on many occasions, a conflict between circuits which will justify discretionary review by this Court must be a real conflict on the same matter of law or fact, and not merely an inconsistency in dicta or in the general principles utilized. The conflict must be "a real and embarrassing conflict of opinion and authority between the circuit courts of appeals." *Layne and Bowler Corp. v. Western Wells Works, Inc.*, 261 U. S. 387, 393 (1923).

There is no conflict in the application of principles of law between the decisions of the Third Circuit and the Sixth Circuit. In both cases the circuit courts followed the principles of law articulated by this Court in the *Steelworkers Trilogy*.³ Based on the unique facts of the respective cases, however, the courts reached differing results.⁴

3. *United Steelworkers of America v. American Mfg. Co.*, 363 U. S. 564 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, *supra*; *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, *supra*.

4. A difference in result between cases in this area cannot of itself establish a conflict. Obviously, courts applying the identical

In *Detroit Coil Co.* the employer sought to vacate an arbitrator's award holding that, by virtue of past practice, the company had waived certain notification requirements set forth in the grievance procedure of the collective bargaining agreement. The arbitrator therefore held that the grievance was arbitrable despite the union's untimely filing of its demand for arbitration. The arbitrator ruled that the matter was arbitrable, *inter alia*, because the employer had not in the past relied upon the time limits to deny such grievances, and because the arbitrator concluded that to hold otherwise would deteriorate the existing good relations between the company and the union.

In reaching their respective decisions the Sixth Circuit and the Third Circuit each followed the principle set forth in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U. S. 593 (1960), that arbitration is the favored means of settling labor disputes and that federal courts should refrain from reviewing the merits of an arbitration award. Whether or not the Sixth Circuit was correct in reaching its decision in *Detroit Coil Co.*, that decision turned upon the application of undisputed principles of law to very specific factual circumstances. The decision is clearly not in conflict on the same matter of law or fact with the decision of the Third Circuit below. As this Court has frequently held, a grant of certiorari is improper where conflicts in decisions arise from differences in states of fact, and not in the application of principles of law. See, e.g., *Wisconsin Electric Co. v. Dumore Co.*, 282 U. S. 813 (1931). The Petition for a Writ of Certiorari should therefore be denied.

4. (Cont'd.)

legal principles to different factual situations may draw different conclusions as to whether an arbitration award is properly subject to a review on the merits.

IV. Certiorari Should Be Denied for the Reason That the Decision of the Court Below Is Not in Conflict With Any Decision of This Court.

Petitioners have urged that the decision of the Third Circuit is in conflict with the decision of this Court in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U. S. 593 (1960). In fact, however, Petitioners are asserting no more than that they disagree with the decision of the Third Circuit insofar as it held that the decision of the ECJAC did draw its essence from the collective bargaining agreement. There is no doubt, however, that the Third Circuit applied the principles of law articulated in the *Steelworkers Trilogy*. The court analyzed the facts before it, applied those principles, and concluded that the award did draw its essence from the collective bargaining agreement. In so doing the court accepted as the starting point of its inquiry the principle that arbitration is the favored alternative forum for dispute resolution in the industrial context, *Gateway Coal Co. v. United Mine Workers of America*, 414 U. S. 368, 377 (1974), and that all doubts as to the coverage of an arbitration clause are to be resolved in favor of arbitration. *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, *supra* at 582-83 (1960). The fact that the Petitioners disagree with the result reached by the Third Circuit is not sufficient to establish the conflict necessary to warrant a discretionary review by this Court, and the Petition for Certiorari should therefore be denied.

V. Certiorari Should Be Denied for the Reason That the Court Below Followed the Usual Course of Judicial Proceedings in Affirming the Dismissal of the Petitioners' Complaint in the District Court.

As a final basis for the Petition, it is asserted that the failure of the Third Circuit to accept as true the well-

pleaded allegations of the Petitioners in their Complaint in the district court was such an egregious departure from the usual course of judicial proceedings as to justify a discretionary review by this Court. Ordinarily, however, "... an application by a District Court of the Rules of Procedure when affirmed by the Court of Appeals will not be reviewed by this Court." *Appalachian Power Co. v. Amer. Inst. of Cert. Public Accts.*, 4 L. Ed. 2d 30, 32, 80 S. Ct. 16 (1959) (per Brennan, J., as individual Justice). Rather, in cases involving questions of judicial procedure this Court has deemed certiorari to be appropriate almost exclusively in cases where matters of basic procedural policy of general application to all federal courts are involved. The instant case is not such a case.

The Petitioners assert that the court below erred in not following the principle that, on a Motion to dismiss under F. R. Civ. P. 12(b)(6), allegations of a Complaint are to be taken as admitted and the Complaint liberally construed in favor of the plaintiff. As a preliminary matter, it should be noted that this issue was not presented to the Third Circuit as an important one; rather the Petitioners stated in their Brief filed with the Third Circuit that "this point is not essential to this Court's disposition of this matter." (Petitioners' Brief, p. 12). More importantly, however, the treatment of the Petitioners' Complaint by the Third Circuit was fully consistent with the normal course of judicial proceedings, and does not "call for an exercise of this Court's power of supervision" within the meaning of Sup. Ct. R. 19(1)(b).

Specifically, Petitioners state that they alleged in their Complaint that the productivity standards enacted by respondent Helms Express were unreasonable.⁵ This allegation

5. Petitioners also state that the Third Circuit erred in not accepting as admitted the alleged fact that Local 30 never had an

tion, it is argued, should have been taken as admitted for purposes of the respondent's Motion to Dismiss the Complaint. This allegation, however, is entirely conclusory in nature. In fact, the question of the reasonableness of the "standards" and the local union's response to the "standards" were the very matters as to which the ECJAC was called upon to render its decision. The propriety of that decision, in turn, was the very issue presented to the courts below for their determination.

Far from being contrary to the usual course of judicial proceedings, the principle is well established in federal courts that only well-pleaded material allegations of the Complaint are taken as admitted, and conclusions of law or unsupported conclusions of fact are not so taken. *See, e.g., Tamari v. Bache & Co. (Lebanon) S. A. L.*, 565 F. 2d 1194, 1198-99 (7th Cir. 1977), *cert. denied* 435 U. S. 905 (1978); *United States v. Tulare Lake Canal Co.*, 535 F. 2d 1093, 1097 (9th Cir. 1976), *cert. denied*, 429 U. S. 1121, *rehearing denied*, 430 U. S. 976 (1977); *United States v. Christian*, 505 F. 2d 94, 100 (5th Cir. 1974); *Cole v. Cardoza*, 441 F. 2d 1337, 1342 (6th Cir. 1971); *Pauling v. McElroy*, 278 F. 2d 252, 253-54, *cert. denied*, 364 U. S. 835 (1960); *Ryan v. Scoggin*, 245 F. 2d 54, 57 (10th Cir. 1957). In *dictum*, this Court has on several occasions stated that conclusions of law, or general conclusions of

5. (Cont'd.)

opportunity to discuss or negotiate the productivity measurement program with Helms Express. This "fact," however, is contradicted by Petitioners' own Complaint in the district court, which includes as Exhibit "C" the decision of the WPJAC. The Exhibit sets forth the employer's position that meetings were held with Local 30 to discuss productivity and that Local 30 failed to cooperate with Helms. As this Exhibit makes clear, the grievance committees were presented with evidence concerning the refusal of Local 30 to agree to the productivity measurement program. For the courts below to have concluded otherwise would therefore have contradicted Petitioners' own pleading.

law or fact, are not "well-pleaded" allegations for purposes of a motion to dismiss. *See Newport News Co. v. Schauffler*, 303 U. S. 54, 57 (1938); *Pacific States Co. v. White*, 296 U. S. 176, 185 (1935). In discounting the conclusory effect of certain of the allegations of plaintiffs' Complaint the district court, and the Third Circuit, acted in a manner fully consistent with the usual course of judicial proceedings. The Petition for certiorari should therefore be denied.

CONCLUSION.

As this Court made clear in the *Steelworkers Trilogy* a federal court should seldom review the merits of a labor arbitrator's award. The Third Circuit expressly followed that principle in the instant case and, on the specific facts set forth in the Complaint and on the specific language of the collective bargaining agreement, refused to disturb the award of the Eastern Conference Joint Area Committee adversely affecting the Petitioners. The decision of the Third Circuit was of importance solely to the litigants in this case, and turned on facts unique to this case. There are thus no special or important reasons favoring an exercise of this Court's discretionary power of review. Accordingly, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

The undersigned hereby certifies that three copies of the foregoing Brief of Respondent Helms Express in Opposition to Petition for Certiorari were served upon the following counsel for the parties to this proceeding by first class mail, postage prepaid, on July 6, 1979:

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